

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SOUTHERN BAKERIES, LLC)	
)	
and)	CASES
)	
CHERYL MULDREW,)	15-CA-169007
An Individual)	
)	
and)	
)	
LORRAINE MARKS BRIGGS)	15-CA-170425
An Individual)	
)	
and)	
)	
BAKERY, CONFECTIONARY,)	15-CA-174022
TOBACCO WORKERS, AND GRAIN)	
MILLERS UNION)	

**RESPONDENT SOUTHERN BAKERIES' EXCEPTIONS TO
ADMINISTRATIVE LAW JUDGE DECISION**

Respondent, Southern Bakeries, LLC (“Southern Bakeries” or “the Company”), pursuant to Sections 102.46 and 102.67 of the Rules and Regulations of the Board, respectfully files its exceptions to the Decision of the Administrative Law Judge in the above-captioned case (the “Decision”). The bases for these exceptions are more fully set forth in Southern Bakeries’ Brief in Support filed herewith.¹

Southern Bakeries respectfully excepts to the following findings and conclusions:

1. First, the ALJ erred by concluding that the Company violated Section 8(a)(1),(3) and (4) of the Act by (i) issuing a last chance agreement to Lorraine

¹ See *Special Touch Home Care Servs.*, 349 NLRB 759, 760 (2007) (noting that Rule 102.46(b)(1) requires a party to state the grounds for an exception but make the argument, including citation to the facts, in the supporting brief).

Marks-Briggs (“Briggs”) on October 16, 2015; (ii) suspending Briggs on February 8, 2016; (iii) discharging Briggs on February 19, 2016; and (iv) marking Briggs ineligible for rehire on March 4, 2016. (Decision at 13.) The evidence demonstrated that Briggs was disciplined for her admitted violations of valid workplace rules, and that decision would have been the same regardless of Briggs’ May 2013 discipline (which the Board has previously ordered be expunged). The ALJ’s finding otherwise ignored probative evidence and was based on his own conjecture, surmise, and authority overreach.

2. Second, the ALJ erred in finding that the Company violated Section 8(a)(1) by allegedly telling Cheryl Muldrew (“Muldrew”) not to discuss her last chance warning with anyone else on January 21, 2016. (Decision at 12.) In reaching this conclusion, the ALJ ignored probative evidence. A fair review of all the evidence fails to show that Southern Bakeries prohibited Muldrew from discussing her discipline.

3. Third, the ALJ erroneously concluded that the Company told Muldrew that she was being discharged in part for discussing her last change agreement with other employees in violation of Section 8(a)(1). (Decision at 12.) As above, this finding was also in error because the ALJ ignored probative evidence that corroborated that no unlawful statements were made to Muldrew.

4. Fourth, the ALJ erred by determining that the Company violated Section 8(a)(1) by maintaining a rule that prohibits employees from making audio recordings anywhere in its Hope facility at any time. (Decision at 12.) This finding was in error because the rule at issue was not promulgated in response to Union

activity, has never been used to prohibit protected activity, and would not reasonably be construed by employees as curtailing their Section 7 rights.

5. Fifth, the ALJ erred by determining that the Company violated Section 8(a)(1) by maintaining a rule that prohibits employees from using company time or resources for personal use unrelated to employment at any time, including non-work time. (Decision at 12.) As above, this ruling was also in error because that rule was not promulgated in response to Union activity, has never been used to prohibit protected activity, and would not reasonably be construed by employees as curtailing their Section 7 rights.

With respect to each of the foregoing exceptions, Southern Bakeries will cite specific references to the Record in the accompanying Brief.

Southern Bakeries submits that the ALJ's finding and conclusions that Southern Bakeries violated the Act as set forth in his Decision are contrary to the evidence, applicable law, and precedent under the National Labor Relations Act. As a result, Southern Bakeries respectfully requests that the Board not adopt those particular findings and conclusions in the ALJ's Decision.

Respectfully submitted,

s/David L. Swider

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing “Respondent Southern Bakeries’ Exceptions to the Administrative Law Judge Decision” has been served upon the following parties, by email, this 24th day of July 2017:

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I hereby certify that a copy of the foregoing “Respondent Southern Bakeries’ Exceptions to the Administrative Law Judge Decision” has been served upon the following, via UPS overnight delivery, this 24th day of July 2017:

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